No. 470.

Motion by appellees to advance

Filed Oct 14, 1897.

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 470.

GEORGE J. CROSSLEY (PETITIONER ON BEHALF OF SALTER D. WORDEN) AND SALTER D. WORDEN, *Appellants*,

vs.

THE STATE OF CALIFORNIA AND CHARLES AULL, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA, *Appellees*.

MOTION BY APPELLEES TO ADVANCE CASE FOR HEARING, NOTICE OF MOTION AND AFFIDAVIT.

W. F. FITZGERALD,
Attorney-General of California, and

W. H. ANDERSON,
Assistant Attorney-General of California, for Appellees.

LAW REPORTER PRINT, WASHINGTON, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 470.

GEORGE J. CROSSLEY (PETITIONER ON BEHALF OF SALTER D WORDEN) AND SALTER D. WORDEN, APPELLANTS,

vs.

THE STATE OF CALIFORNIA AND CHARLES AULL, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA, APPELLEES.

Motion by Appellees to Advance the Case on the Docket and to have it set down for a particular day for Hearing.

Now come the State of California and Charles Aull, warden of the State Prison of the State of California, the appellees in the above-entitled case, and move the above-entitled court for an order advancing said case on the docket of said court, and setting the same down for hearing on a particular day. Said motion is made on the following facts and grounds:

1. This appeal is taken from an order of the United States Circuit Court of the Ninth Circuit in and for the Northern District of California, denying an application of the appellant Crossley, made on behalf of the appellant Worden, for a writ of *habeas corpus* directed to the appellee Aull. The

appellant Worden is under sentence of death upon judgment of conviction for murder in the first degree rendered by the Superior Court of the County of Yolo, State of California, and affirmed by the Supreme Court of said State, and, pending execution, is detained in custody by the appellee Aull, under and by virtue of said judgment of conviction and the laws of said State. The said judgment of conviction was rendered against said appellant on the 16th day of November, 1894. Its execution was delayed pending the appeal to the Supreme Court of said State; and is now being still further delayed pending this appeal.

2. The special and peculiar facts and circumstances existing as reasons for the advancement of this case on the docket of this court are as follows:

(*a*) That this is a case involving the prompt and orderly administration of the criminal laws of the State of California.

(*b*) That the appellant Worden has been convicted of murder in the first degree in one of the superior courts of the State of California, the judgment of conviction has been passed upon and affirmed by the highest judicial tribunal of that State, and this proceeding delays and thwarts the punishment of said appellant in accordance with the judgment pronounced against him by the courts of said State.

(*c*) That by virtue of the provisions of Section 766 of the Revised Statutes of the United States the appeal in this case prevents the prompt and orderly administration of the criminal laws of the State of California.

(*d*) That by reason of this proceeding, and others of a like character now on appeal to this court, the enforcement of the criminal laws of the State of California is hampered and thwarted; and the laws of that State for the administration of justice and the punishment of crime are rendered largely nugatory and are brought into derision and contempt.

(*e*) That, therefore, a speedy determination of this case by this court is in the interests of justice, law and order, and is

a matter of the utmost importance to the people of the State of California.

(*f*) That the Attorney General of the State of California is at present in Washington in attendance upon this honorable court in this and three other cases of a similar character, now on appeal to this court; that he is detained in Washington by this and the other cases referred to, and that he is thereby prevented from attending to the other official duties of his office requiring his presence in California.

3. The facts upon which the foregoing grounds for this motion are based will more fully appear from the transcript of the Record of the case on file and from the affidavit of W. H. Anderson, Assistant Attorney General of the State of California, attached hereto and filed herewith, and said Record and affidavit are hereby referred to and by such reference made a part of this motion.

W. F. FITZGERALD,
Attorney General of the State of California, and

W. H. ANDERSON,
Assistant Attorney General of the State of California,
For Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1897. No. 470.

GEORGE J. CROSSLEY (Petitioner on behalf of Salter D. Worden) and SALTER D. WORDEN, Appellants.

vs.

THE STATE OF CALIFORNIA and CHARLES AULL, Warden of the State Prison of the State of California, Appellees.

Affidavit of W. H. Anderson in support of motion to advance.

DISTRICT OF COLUMBIA, *ss:*

W. H. Anderson, being first duly sworn, doth upon oath depose as follows:

That he is the Assistant Attorney General of the State of California, and one of the counsel for the above-named appellees, and as such is fully conversant with all of the facts and circumstances connected with the proceedings against appellant Worden in the courts of the State of California and hereinafter mentioned and referred to, and with all the facts and circumstances connected with this proceeding; that appellant Worden was convicted in the Superior Court of the County of Yolo, State of California, of the crime of murder in the first degree; that judgment of conviction for the said crime was pronounced against him by said court on the 16th day of November, 1894, that he was therein and thereby sentenced to be hanged and pending the execution of said judgment he was therein and thereby ordered to be placed in the custody of the appellee Aull herein; that thereafter an appeal was taken by appellant Worden to the Supreme Court of the State of California from the said judgment of conviction and also from an order of the said Superior Court denying a motion made by him for a new trial; that after a thorough consideration of all the issues involved in said appeal the Supreme Court of the State of California, on the 29 day of June, 189 , rendered its judgment and filed its opinion affirming the said judgment and order of said Superior Court so appealed from; that pend-

ing said appeal the execution of said judgment of conviction was stayed by law; that thereafter, in due course of law, the said Superior Court made an order fixing a date for the execution of said judgment and directing the delivery of said appellant into the custody of said appellee for execution in accordance with the said judgment of conviction and the laws of the State of California; that thereupon said appellant was so delivered into and has ever since remained in the custody of said appellee; that the date so fixed by the said last-mentioned order for the execution of said judgment of conviction was the 4th day of June, 1897; that prior to said date so fixed, to wit, on the 3d day of June, 1897, appellant made the application to the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, for a writ of *habeas corpus*, from the order denying which this appeal is ~~by him~~ prosecuted, and prior to the said 4th day of June, 1897, perfected this appeal; that by the provisions of Section 766 of the Revised Statutes of the United States, pending this appeal, all proceedings against the person of the defendant by the courts or officers of the State of California are declared to be null and void; that, therefore, the enforcement of the criminal laws of this State are thwarted and prevented by this case; that three other cases of a similar nature are now pending before this court in which the execution of three other persons convicted of murder in the courts of the State of California and sentenced to be hanged is being similarly delayed; and that an early determination of this case is in the furtherance of justice, in the interests of the administration of the criminal laws of the State of California, and is of the utmost importance to the people of said State.

Further this deponent sayeth not.

W. H. ANDERSON.

Subscribed and sworn to before me, this 14th day of October, 1897.

Oscar Lockett (Seal)

A Notary Public in and for the District of Columbia.

IN THE SUPREME COURT OF THE UNITED STATES.

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vs.

THE STATE OF CALIFORNIA, and CHARLES AULL, Warden of the State Prison of the State of California, Appellees.

Notice of Motion to Advance Case.

To GEORGE J. CROSSLEY and SALTER D. WORDEN, Appellants, and to ISAAC J. MACCABE and GEORGE W. MONTEITH, their Counsel:

You and each of you will please take notice that the appellees by their counsel, will, on the first Monday in November, 1897, at the opening of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, in the court room of said court, in the Capitol Building at Washington, District of Columbia, make and submit to the said court, the foregoing motion in writing (hereunto attached) to advance this case upon the docket of said court and to have it set down for a particular day for hearing. Said motion will be made upon the facts and grounds set forth in said written motion which is hereby referred to and by such reference made a part of this notice. There will be used upon the hearing of said motion and submitted therewith, the affidavit of W. H. Anderson, hereunto attached and the record on file with the clerk of said court in this case.

Respectfully,

W. F. FITZGERALD,
Attorney General of the State of California, and

W. H. ANDERSON,
Assistant Attorney General of the State of California,
For Appellees.